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Attorneys for the Plaintiff

HYDE & SWIGART
 San Diego, California

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

Patricia Connor, Individually and
 on Behalf of All Others Similarly
 Situated

Plaintiffs,

v.

**JPMorgan Chase Bank and
 Federal National Mortgage
 Association a/k/a Fannie Mae,**

Defendants.

Case Number: **10CV 1284**

DMS BGS

CLASS ACTION

**Complaint for Damages and
 Injunctive Relief Pursuant To The
 Telephone Consumer Protection
 Act, 47 U.S.C § 227 et seq.**

Jury Trial Demanded

ORIGINAL

INTRODUCTION

- 1
- 2 1. Patricia Connor ("Plaintiff") brings this class action for damages, injunctive
- 3 relief, and any other available legal or equitable remedies, resulting from the
- 4 illegal actions of JPMorgan Chase Bank ("Chase") and Federal National
- 5 Mortgage Association a/k/a Fannie Mae ("Fannie Mae") or collectively as
- 6 ("Defendants"), in negligently and/or willfully contacting Plaintiff on
- 7 Plaintiff's cellular telephone, in violation of the Telephone Consumer
- 8 Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading
- 9 Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as
- 10 to herself and her own acts and experiences, and, as to all other matters, upon
- 11 information and belief, including investigation conducted by her attorneys.

JURISDICTION AND VENUE

- 12
- 13 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up to
- 14 \$1,500 in damages for each call in violation of the TCPA, which, when
- 15 aggregated among a proposed class number in the tens of thousands, exceeds
- 16 the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff seeks
- 17 relief on behalf of a national class, which will result in at least one class
- 18 member belonging to a different state than that of Defendants. Therefore, both
- 19 elements of diversity jurisdiction under the Class Action Fairness Act of 2005
- 20 ("CAFA") are present, and this Court has jurisdiction.
- 21 3. Venue is proper in the United States District Court for the Southern District of
- 22 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendants
- 23 does business within the State of California and the County of San Diego.

PARTIES

- 24
- 25 4. Plaintiff is, and at all times mentioned herein was, an individual citizen and
- 26 resident of the State of California. Plaintiff is, and at all times mentioned herein
- 27 was, a "person" as defined by 47 U.S.C. § 153 (10).
- 28

5. Plaintiff is informed and believed, and thereon alleges, that Defendants are, and at all times mentioned herein were, corporations. Chase's primary corporate address is 270 Park Avenue, New York, NY 10017. Fannie Mae's primary corporate address is 3900 Wisconsin Avenue NW, Washington, DC 20016. Defendants are, and at all times mentioned herein were, corporations and "persons," as defined by 47 U.S.C. § 153 (10). Plaintiff is informed and believes, and on the basis of that information and belief alleges, that at all times mentioned in this complaint, Defendants were the agents and employees of their codefendants, and in doing the things alleged in this complaint, were acting within the course and scope of that agency and employment. Plaintiff is informed and believes, and thereon alleges, that at all times relevant Defendants conducted business in the State of California and in the County of San Diego.

FACTUAL ALLEGATIONS

6. At all times relevant, Plaintiff was an individual residing within the State of California. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (10).
7. Defendants are, and at all times mentioned herein was, a corporation and a "person," as defined by 47 U.S.C. § 153 (10).
8. At all times relevant Defendants conducted business in the State of California and in the County of San Diego.
9. On multiple occasions over numerous days, all prior to the date this Complaint was filed, but sometime after four years prior to the date this Complaint was filed, Defendants contacted Plaintiff on Plaintiff's cellular telephone via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227 (a)(1).
10. During these telephone calls Defendants used "an artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227 (b)(1)(A).

1 11. The telephone number Defendants called was assigned to a cellular telephone
2 service for which Plaintiff incurs a charge for incoming calls pursuant to 47
3 U.S.C. § 227 (b)(1).

4 12. These telephone calls constituted calls that were not for emergency purposes
5 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

6 13. Plaintiff did not provide prior express consent to receive calls on Plaintiff's
7 cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

8 14. These telephone calls by Defendants violated 47 U.S.C. § 227(b)(1).

9 **CLASS ACTION ALLEGATIONS**

10 15. Plaintiff brings this action on behalf of herself and on behalf of and all others
11 similarly situated ("The Class and Subclass One").

12 16. Plaintiff represents, and is a member of, The Class, consisting of all persons
13 within the United States who received any telephone call from Defendants to
14 said person's cellular telephone made through the use of any automatic
15 telephone dialing system or an artificial or prerecorded voice, within the four
16 years prior to the filing of this Complaint. She also represents, and is a
17 member of, Subclass One, consisting of all persons within the United States
18 who received any telephone call from Defendants to said person's cellular
19 telephone made through the use of any automatic telephone dialing system or
20 an artificial or prerecorded voice, and such Subclass member had not
21 provided their cellular telephone number to Defendants' assignee(s) --the
22 original creditor(s) for whom Defendants was attempting to collect a debt
23 with the cellular telephone call -- in any application for services or credit,
24 within the four years prior to the filing of this Complaint.

25 17. Defendants, their employees and agents are excluded from The Class and
26 Subclass. Plaintiff does not know the number of members in The Class and
27 Subclass, but believes The Class and Subclass Members number in the tens
28

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San Diego, California

1 of thousands, if not more. Thus, this matter should be certified as a Class
2 action to assist in the expeditious litigation of this matter.

3 18. Plaintiff and members of The Class and Subclass were harmed by the acts of
4 Defendants in at least the following ways: Defendants illegally contacted
5 Plaintiff and Class and Subclass members via their cellular telephones
6 thereby causing Plaintiff and Class and Subclass members to incur certain
7 cellular telephone charges or reduce cellular telephone time for which
8 Plaintiff and Class and Subclass members previously paid, by having to
9 retrieve or administer messages left by Defendants during those illegal calls,
10 and invading the privacy of said Plaintiff and Class and Subclass members.
11 Plaintiff and The Class and Subclass were damaged thereby.

12 19. This suit seeks only damages and injunctive relief for recovery of economic
13 injury on behalf of The Class and Subclass and it expressly is not intended to
14 request any recovery for personal injury and claims related thereto. Plaintiff
15 reserves the right to expand The Class and Subclass definitions to seek
16 recovery on behalf of additional persons as warranted as facts are learned in
17 further investigation and discovery.

18 20. The joinder of the Class and Subclass members is impractical and the
19 disposition of their claims in the Class action will provide substantial benefits
20 both to the parties and to the court. The Class and Subclass can be identified
21 through Defendants' records.

22 21. There is a well-defined community of interest in the questions of law and fact
23 involved affecting the parties to be represented. The questions of law and
24 fact to the Class and Subclass predominate over questions which may affect
25 individual Class and Subclass members, including the following:

- 26 a. Whether, within the four years prior to the filing of this Complaint,
27 Defendants made any call (other than a call made for emergency purposes
28 or made with the prior express consent of the called party) to a Class

1 member using any automatic telephone dialing system or an artificial or
2 prerecorded voice to any telephone number assigned to a cellular
3 telephone service.

- 4 b. Whether, within the four years prior to the filing of this Complaint,
5 Defendants made any call (other than a call made for emergency purposes
6 or made with the prior express consent of the called party) to the Subclass
7 member using any automatic telephone dialing system or an artificial or
8 prerecorded voice to any telephone number assigned to a cellular
9 telephone service and such Subclass member had not provided their
10 cellular telephone number to Defendants' assignee(s), the original
11 creditor(s) for whom Defendants was attempting to collect a debt with the
12 cellular telephone call, in any application for services or credit.
- 13 c. Whether Plaintiff and the Class and Subclass were damaged thereby, and
14 the extent of damages for such violation; and
- 15 d. Whether Defendants should be enjoined from engaging in such conduct in
16 the future.

- 17 22. As a person that received numerous calls using an automatic telephone
18 dialing system or an artificial or prerecorded voice, without Plaintiff's
19 express prior consent, and as a person that has never provided her cellular
20 telephone number to Defendants' assignee(s) of the debt for which
21 Defendants was attempting to collect, in any application for credit or
22 services, Plaintiff is asserting claims that are typical of the Class and
23 Subclass. Plaintiff will fairly and adequately represent and protect the
24 interests of the Class and Subclass in that Plaintiff has no interests
25 antagonistic to any member of the Class and Subclass.
- 26 23. Plaintiff and the members of the Class and Subclass have all suffered
27 irreparable harm as a result of the Defendants' unlawful and wrongful
28 conduct. Absent a class action, the Class and Subclass will continue to face

1 the potential for irreparable harm. In addition, these violations of law will be
2 allowed to proceed without remedy and Defendants will likely continue such
3 illegal conduct. Because of the size of the individual Class and Subclass
4 member's claims, few, if any, Class and Subclass members could afford to
5 seek legal redress for the wrongs complained of herein.

6 24. Plaintiff has retained counsel experienced in handling class action claims and
7 claims involving violations of the Telephone Consumer Protection Act.

8 25. A class action is a superior method for the fair and efficient adjudication of
9 this controversy. Class-wide damages are essential to induce Defendants to
10 comply with federal and California law. The interest of Class members in
11 individually controlling the prosecution of separate claims against
12 Defendants is small because the maximum statutory damages in an individual
13 action for violation of privacy are minimal. Management of these claims is
14 likely to present significantly fewer difficulties than those presented in many
15 class claims.

16 26. Defendants have acted on grounds generally applicable to the Class and
17 Subclass, thereby making appropriate final injunctive relief and
18 corresponding declaratory relief with respect to the Class and Subclass as a
19 whole.

20 **FIRST CAUSE OF ACTION**
21 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
22 **47 U.S.C. § 227 ET SEQ.**

23 27. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
24 as though fully stated herein.

25 28. The foregoing acts and omissions of Defendants constitute numerous and
26 multiple negligent violations of the TCPA, including but not limited to each and
27 every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*
28

29. As a result of Defendants' negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and The Classes are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

30. Plaintiff and The Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 *ET SEQ.***

31. Plaintiff incorporates by reference the above paragraphs 1 through 26, inclusive, of this Complaint as though fully stated herein.

32. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

33. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of The Classes are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

34. Plaintiff and The Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendants:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

- As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class and Subclass member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION
OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class and Subclass member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demand, a trial by jury.

Date: June 11, 2010

HYDE & SWIGART

By: 

Joshua B. Swigart
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

FILED

JUN 16 2010

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Patricia Connor, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

JPMorgan Chase Bank and Federal National Mortgage Association a/k/a Fannie Mae

County of Residence of First Listed Defendant: New York
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10CV 1284

DMS

BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227 et seq.

Brief description of cause:

ICPA

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/14/10

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

14719 3350 -
TB 06-16-10

ORIGINAL

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS014719
Cashier ID: mbain
Transaction Date: 06/16/2010
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE
For: CONNOR V JPMORGAN CHASE
Case/Party: D-CAS-3-10-CV-001284-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3917
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.